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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON

IN THE MATTER OF:

Rhone-Poulenc Inc.
(now know as Bayer CropScience Inc.)
Rhodia Inc.
Container Properties, L.L.C.
Marginal Way Facility
Seattle, Washington
(WAD009282302)

U.S. EPA Docket No.
1091-11-20-3008(h)

Respondent

Proceeding Under Section 3008(h) of the
Solid Waste Disposal Act, commonly known)
as the Resource Conservation and Recovery)
Act, as amended, 42 U.S.C. § 6928(h))

SECOND AMENDMENT TO
ADMINISTRATIVE ORDER ON CONSENT
FOR CORRECTIVE ACTION

1. This Second Amendment modifies the Administrative Order on Consent, No. 1091-11-20-3008(h) ("Consent Order") for Corrective Action Activities at the former Rhone-Poulenc Inc. Marginal Way Facility ("Facility") in Seattle, Washington, pursuant to Section XXIV of the Consent Order (Modification).

2. The following entities are liable parties pursuant to the Consent Order, originally executed May 6, 1993, and first amended February 17, 1999: Container Properties, L.L.C., Rhodia Inc., and all successors to Rhone-Poulenc Inc., including but not limited to Bayer CropScience Inc. These liable parties are jointly and severally "Respondent" under the Consent Order with the United States Environmental Protection Agency ("U.S. EPA").

3. The Consent Order requires Respondent to maintain financial security in the amount of \$7 million.

Second Amendment to Consent Order for Corrective Action
Rhone-Poulenc Inc.
EPA Docket No. 1091-11-20-3008(h)

1 4. Currently the financial security required by the Consent Order is in the form of a trust fund.

2 5. Respondent submitted an Interim Measures Construction Work Plan in response to the U.S.
3 EPA's March 13, 2000 Request for an Interim Measures Workplan pursuant to Paragraphs 6.4, 6.5,
4 and 6.6 of the Consent Order. The U.S. EPA conditionally approved the Interim Measures
5 Construction Work Plan on December 4, 2002 ("IM Work Plan"). Preparation and implementation of
6 the IM Work Plan has been estimated to cost approximately \$ 3.5 million according to the Detailed
7 Cost Estimate for Hydraulic Control Interim Measures and Final Corrective Action dated July 25,
8 2002, and prepared by Respondent.

9 6. Respondent and the U.S. EPA have agreed that financial security under the Consent Order
10 may be reduced by the amount to be spent by Respondent on the interim measure described in the IM
11 Work Plan in the amount of \$3.5 million, under the following conditions:

12 a. The financial security will be released in the amount of \$3.5 million upon confirmation by
13 U.S. EPA that on-site physical construction of the Interim Measure has commenced; and

14 b. Unless Respondent withdraws its consent to implement the Corrective Measure in
15 accordance with Paragraphs 6.27, 6.28, 6.29, and 18.6 of the Consent Order, Respondent agrees to
16 establish and maintain sufficient financial security to cover the full estimate for the final remedy or
17 corrective measure selected by the U.S. EPA after completion of the Corrective Measures Study.

18 7. In addition, Respondent and the U.S. EPA agree to amend the Consent Order to include a
19 process for increasing or reducing the financial security in the future without a formal amendment of
20 the Consent Order.

21 8. In order to reflect these modifications, and to clarify the term "Respondent" the following
22 changes are hereby made to the Consent Order:¹

23

24 The definition of the term "Respondent" as defined on page 7, Paragraph 33 of the Consent

25

26 ¹Additions are marked by redline, deletions are marked by ~~strikeout~~.

27 **Second Amendment to Consent Order for Corrective Action**
28 **Rhone-Poulenc Inc.**

EPA Docket No. 1091-11-20-3008(h)

Order is modified as follows:

Respondent shall mean Rhone-Poulenc Inc. ~~(now known as Rhone-Poulenc Ag Company Inc.)~~ ("RPI") jointly and severally with Bayer CropScience Inc., Rhodia Inc. and Container Properties, L.L.C.

Paragraph 1.2 of the Consent Order:

1.2 This Consent Order is issued jointly and severally to Rhone-Poulenc Inc., ~~now known as Rhone-Poulenc Ag Company Inc.~~, ("RPI"), Bayer CropScience Inc., and Rhodia Inc., ~~former owners and former controlling entities~~, and Container Properties, L.L.C., the current owner and controlling entity of the former RPI facility located at 9229 East Marginal Way South, Tukwila, Washington (RPI, Bayer CropScience Inc., Rhodia Inc. and Container Properties, L.L.C. are herein referred to jointly and severally as "Respondent").

Section XXIII (Financial Responsibility):

23.3 Each financial instrument obtained pursuant to this Section must be established and used solely for the purpose of conducting the activities required by this Consent Order at and for this Facility. Each financial instrument submitted to U.S. EPA for approval pursuant to this Section shall satisfy the requirements for financial assurance instruments for closure specified at 40 C.F.R. § 264.151, except that references to closure and closure regulatory requirements shall be revised to refer to the Work required by this Consent Order. Each financial assurance instrument established and maintained by Respondent in accordance with this Section must allow the funds provided by the financial assurance to be available in the event that Respondent proves unable or unwilling to undertake any actions prescribed in this Consent Order while it is in effect so that the activities covered by the instrument may be completed by Respondent, U.S. EPA or others, as determined by U.S. EPA. The phrase "actions prescribed in this Consent Order" as used in the previous sentence does not include the Corrective Measure Implementation ("CMI") in the event that Respondent

1 withdraws its consent to implement the Corrective Measure in accordance with Paragraph 6.27, 6.28,
2 6.29, and 18.6.

3 **23.4 Reduction of Financial Assurance for Interim Measures Work - U.S. EPA**
4 will direct the appropriate party to release \$ 3.5 million to Respondent upon confirmation by U.S.
5 EPA that on-site physical construction of the interim measure specified in the Interim Measures
6 Construction Work Plan conditionally approved by U.S. EPA on December 4, 2002, has commenced.

7 **23.5.** Unless Respondent has withdrawn its consent to implement the Corrective
8 Measure in accordance with Paragraph 6.27, 6.28, 6.29, and 18.6, Respondent must establish and
9 maintain financial security sufficient to provide financial assurance for the CMI. Within thirty (30)
10 days of U.S. EPA approval of the CMI Workplan, Respondent must submit to U.S. EPA for review
11 and approval, a draft instrument in the form and manner specified in Paragraph 23.1 of this Section,
12 for financial security in at least the amount of the U.S. EPA approved cost estimate for the selected
13 Corrective Measure. Within ten (10) days of U.S. EPA approval of the financial instrument,
14 Respondent shall establish financial security in accordance with U.S. EPA's approval.

15 **23.6.** In the event that U.S. EPA determines at any time that the financial security
16 provided pursuant to this Section is inadequate to assure that the Work required by this Consent Order
17 will be completed in a timely manner, Respondent shall, within thirty (30) days of receipt of notice of
18 such determination by U.S. EPA, obtain and present to U.S. EPA for review and approval a draft
19 instrument for an increased amount of financial security in the form and manner specified in Paragraph
20 23.1 of this Section. The phrase "Work required by this Consent Order" as used in the previous
21 sentence does not include the CMI in the event that Respondent withdraws its consent to implement the
22 Corrective Measure in accordance with Paragraph 6.27, 6.28, 6.29, and 18.6. Within ten (10) days of
23 U.S. EPA approval of the financial instrument, Respondent shall establish financial security in
24 accordance with U.S. EPA's approval.

25 **23.7.** The financial security required by this section must remain in force until U.S.
26 EPA determines that the requirements of the Consent Order have been fully satisfied or in accordance

1 with Paragraph 23.8.

2 23.8. If Respondent can show that the estimated cost to complete the remaining Work
3 has diminished below the amount set forth in the financial assurance instrument(s), Respondent may,
4 on any anniversary date of entry of this Consent Order, or at any other time agreed to by U.S. EPA,
5 request a reduction of the amount of the financial security provided under this Section to the estimated
6 cost of the remaining Work to be performed. Respondent shall submit a written proposal for such
7 reduction to U.S. EPA. Upon and in accordance with written approval by U.S. EPA, the amount of
8 financial security may be reduced.


9 23.9. Respondent may change the form of financial assurance provided under this
10 Section at any time, upon notice to and approval by U.S. EPA, provided that the new form of
11 assurance meets the requirements of this Section.

12 9. This Second Amendment to the Administrative Order on Consent for Corrective Action is
13 effective on the date signed by U.S. EPA, Region 10's Director of the Office of Waste and Chemicals
14 Management.

15 10. This Second Amendment to the Administrative Order on Consent for Corrective Action
16 may be signed in counterparts, and such counterpart signature pages shall be given full force and
17 effect.

18
19 IT IS SO AGREED AND ORDERED

20
21 BY:


Richard Albright, Director
Office of Waste and Chemicals Management
United States Environmental Protection
Agency, Region 10

DATE: 7/22/03

1 The undersigned representative of a party to this Second Amendment to the Consent Order for a
2 Corrective Action Activities at the former Rhone-Poulenc Inc. Marginal Way Facility, at 9229 East
3 Marginal Way South, Seattle, Washington, certifies that he or she is fully authorized to enter into the
4 terms and conditions of this Amendment and to execute and legally bind such party to this document.

5
6 FOR BAYER CROPSCIENCE INC. (SUCCESSOR TO RHONE-POULENC INC.):

7 BY: George S. Goodridge

8 DATE: July 18, 2003

9 Name: George S. Goodridge

10 Title: Assistant Secretary

11 Address [please type]:

12 2 T. W. Alexander Drive

13 Research Triangle Park, NC 27709

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27 Second Amendment to Consent Order for Corrective Action
28 Rhone-Poulenc Inc.

EPA Docket No. 1091-11-20-3008(h)

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3 Marginal Way South, Seattle, Washington, certifies that he or she is fully authorized to enter into the
4 terms and conditions of this Amendment and to execute and legally bind such party to this document.

5
6 FOR RHODIA INC.:

7 BY: R. Robert Briggs DATE: JULY 21, 2003

8 Name [please type]: R. Robert Briggs

9 Title [please type]: Director, Manufacturing Services

10 Address [please type]: CN7500
11 Cranbury, NJ 08512-7500
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EPA Docket No. 1091-11-20-3008(h)

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terms and conditions of this Amendment and to execute and legally bind such party to this document.

4 CONTAINER PROPERTIES, L.L.C.

5
6 BY:  DATE: July 18, 2003

7 Name [please type]: Mark W. Robison

8 Title [please type]: Member

9 Address [please type]: 22757 72nd Avenue South
10 Suite E106
11 Kent, WA 98043
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EPA Docket No. 1091-11-20-3008(h)